



# DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

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### WHAT YOU NEED TO KNOW ABOUT ASSET TRANSFERS

#### ***What is an "asset transfer"?***

- An "asset transfer" is when a person gives or sells his or her assets to others.
- An uncompensated asset transfer is when a person gives away money or other property to someone else (including family) or sells property for less than fair market value. Sometimes other types of actions can be uncompensated asset transfers, including but not limited to reducing one's ownership interest in property, giving a loan, waiving one's right to claim ownership, or causing a resource that was previously available to become unavailable.

#### ***Is it ever okay to transfer an asset?***

Some cases of asset transfer are allowable. Contact your local Office of Public Assistance if you have any questions, but, in general asset transfers are allowable if:

- The transfer was made more than five years (60 months) before applying for Medicaid coverage for nursing home or other long term care services
- The transfer was made more recently, but it is determined that the applicant had no way of knowing or reasonably anticipating he or she would require Medicaid coverage
- Small gifts, if it can be determined that there is a pre-established pattern of gifting
- A house can usually be transferred to the Medicaid applicant's spouse, the Medicaid applicant's child under the age of 21, the Medicaid applicant's adult child who is disabled, and certain other family members under special circumstances

#### ***What is the "look-back" period?***

Medicaid will "look back" five years (or 60 months) in order to determine whether an applicant has made any asset transfers and evaluate them to determine whether the transfers were uncompensated or undercompensated.

#### ***What happens if I transferred an asset during this period?***

If Medicaid determines that an asset has been transferred for less than fair market value during the look back period, a penalty may be imposed, making an applicant temporarily ineligible for Medicaid coverage. The length of this penalty is determined by the value transferred.

#### ***How will I know if a penalty has been imposed?***

Before an applicant is penalized for making an asset transfers, he or she will be sent a notice describing the asset transfer, the fair market value of the asset, and the penalty period which may be imposed. This notice also outlines the steps which the applicant must take for rebuttal.

***What is a “rebuttal”?***

A “rebuttal” is the process in which an applicant may argue that an asset transfer was allowable and that no penalty should be imposed. This process is the responsibility of the applicant.

***What is “undue hardship”?***

A penalty period may not be imposed after an asset transfer is made if the penalty would cause an ‘undue hardship’ to the Medicaid applicant/recipient. Undue hardship only exists when ALL of the following circumstances are met:

1. The asset was transferred as a result of theft, exploitation, fraud, misrepresentation, or coercion perpetrated against the applicant/recipient and/or spouse AND
2. The applicant and/or spouse have explored and pursued all reasonable, available legal recourse to acquire the transferred resource or its equivalent value—including but not limited to filing charges with the police and pursuing civil action.

***What constitutes “all reasonable, available legal recourse”?***

At the minimum, an applicant (or the applicant’s representative) must file a report with the police and pursue civil action against the recipient of the transferred asset. It is important that the actions taken by the Medicaid applicant are determined to be in good faith by the Department; in civil cases, mediation or settlement may meet this criterion.

*This information is current as of 9/1/2010. Medicaid policies can and do change, and it is the responsibility of the facility and applicant to verify the most current policies when working towards establishing Medicaid eligibility.*